

Committee: Cabinet

Date: 15 January 2018

Wards: All

Subject: Dog Control Public Space Protection Orders

Lead officer: Chris Lee, Director of Environment & Regeneration

Lead member: Councillor Nick Draper, Cabinet Member for Community & Culture

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Reasons for Urgency: The Chair has approved the submission of this report as a matter of urgency as the Council is required to update its dog control measures which were last considered in 2007. The Order is scheduled for consideration at the Council meeting on 7 February, for adoption and implementation by Spring 2018.

Recommendations:

1. That Cabinet approves and recommends to Council the making of the following new dog control Public Spaces Protection Order for Merton's public spaces:
 - i) The prohibition of dog fouling by ensuring that dog owners and walkers clear up after their dogs.
 - ii) The establishment of dog exclusion areas, predominantly children's playgrounds and enclosed play and sports facilities, such as tennis courts, multi-use games areas and bowling greens.
 - iii) Dogs to be put on a lead in public places when directed to do so by an authorised officer of the council, a police officer or a community support officer. (This proposal would apply within Morden Hall Park and on Mitcham Common, but not Wimbledon Common which has its own byelaws).
 - iv) The maximum number of dogs that can be walked by one person in all public open spaces (including Morden Hall Park and Mitcham Common, but excluding Wimbledon Common) at any one time is four.
 2. To agree that the amount of the fixed penalty payable under a Fixed Penalty Notice issued in respect of breaches of the Order be £80, payable within 14 days and with no discount for early payment.
 3. To authorise the Director of Environment & Regeneration in consultation with the Cabinet Member for Community & Culture to finalise and make the Public Space Protection Order, to come into force on 5 March 2018 or as soon as possible thereafter.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report sets out the Council's proposals for future dog controls in public spaces within Merton borough.
- 1.2. The proposals will replace existing dog control measures made under the Clean Neighbourhoods and Environment Act 2005 and include some new measures to address some additional dog-related concerns that have emerged since these existing measures were first adopted in 2007.
- 1.3. The report outlines the results of a recent public consultation exercise on this topic and also captures some of the evidence from recent community feedback and local data in support of its proposals.

2 DETAILS

- 2.1. Merton has two Dog Control Orders currently, adopted in 2007:
 - It is an offence for any dog owner or dog walker to fail to clean up after their dog. The order applies across the whole borough.
 - Dog exclusion areas have been designated where dogs are not permitted: children's playgrounds and ball courts, for example.
- 2.2. Public Space Protection Orders (PSPOs) are a relatively new measure, established by the Anti-social behaviour, Crime and Policing Act 2014, that replace some existing legislation and introduces wider discretionary powers to address particular nuisances or problems that are detrimental to the local community's quality of life. PSPOs seek to ensure that the law-abiding majority can use and enjoy public spaces safe from anti-social behaviour. The Orders can be enforced by fixed penalty notices or prosecution by the police or the Council. Under the 2014 Act, the existing Dog Control orders ceased to exist after 17 October 2017 but, under transitional provisions, they automatically become effective as PSPOs for a period of three years, that is, until October 2020.
- 2.3. The Council's Greenspaces team has been monitoring dog issues within the borough's parks for a number of years and, together with other Council service teams, has received reports of some regrettable incidents involving dogs, as well as correspondence from residents expressing their fears and anxieties about the behaviour of dog owners and dog walkers from across the borough.
- 2.4. Some recent examples of incident and concerns reported to the Council are provided below:

"Today (7 October 2016) I was walking west down the hill (in Morden Park) at 9.30 when coming up the hill towards me was a middle-aged woman with 3 large boxer type dogs who were all jumping and running in different directions. I shouted to the woman could she get them under control as 2 of them were bounding towards me. She was unable to stop them running towards me, jumping up at me, and one of them scratched my hand. They were strong, powerful dogs which reached up to my shoulder. This incident really upset me as I have personal experience of the long term physical and psychological issues of being attacked by a dog. My daughter was attacked in the same park 7 years ago by an out of control Rottweiler (whose owner

was later prosecuted). (My daughter) was) seriously injured and still has scars on her face.

“Yesterday (28 February 2017) I was walking my dog on Mitcham Common when it was attacked by around 15 dogs being walked by two “professional” dog walkers. Half an hour later I saw another two dog walkers with 14 dogs. I told them that I thought that they had too many dogs. All that I got was a torrent of abuse (and a physical threat).”

“I am contacting you (27 July 2017) regarding some concerns I have about children’s play areas and specifically Mostyn Gardens in Morden. I am seriously considering not taking my son to Mostyn Gardens due to the following issues.....dog excrement around the children’s play area.”

“This morning (19 September 2017) on the boardwalk (at Beverley Meads) a male dog walker with 9 dogs running loose became abusive when I challenged him about the number of dogs he had - he made no effort to draw them away from me to let me pass”.

“I go for a jog around Cottenham Park every day. I have been chased and barked at by a terrier type dog snarling as it chases which has worried me as it looks like it will bite me. On the next run around the park on this day, the lady’s dog ran into me and kept running at my ankles barking and snarling and snapping. I politely asked the lady owner to please keep her dog on a lead. The dog came at me again running toward me in a vicious manner as if it was going to bite me about a week later. Today, (26 December 2017) the dog has been snarling and coming at me again. I mentioned that this had now happened three times and I had already kindly asked the lady to keep her dog on a lead previously. I asked the lady if she would please provide her name and she refused. She said she would not put her dog on a lead despite its being out of control and being dangerous in my view in a public place with grown ups and children enjoying the space.”

- 2.5. During the five year period ending on 31 December 2017, Merton Council’s Enforcement Team received and recorded 20 incidents of dog-on-dog attacks within the borough.
- 2.6. During the same five year period ending on 31 December 2017, Merton Council’s Enforcement Team received and recorded 25 reports of dangerous dogs.
- 2.7. Data provided by the Metropolitan Police has confirmed 243 records of dog attack crimes within Merton for the period 2013-2017. These records represent incidents in which dogs have been deemed to be dangerously out of control in a public place and have caused actual injuries to persons. The data reveals, regrettably, a steadily rising trend of dog attacks during this time period, the number recorded in 2017 being double that of 2014, as outlined in the table below:

Year	No. of dog attack crimes recorded
2013	14

2014	34
2015	41
2016	44
2017	68

2.8. The Council is committed to tackling these issues and, with the expressed support of both the Mitcham Common Conservators and the National Trust to include their open space landholdings within the borough, the authority has recently conducted a community consultation exercise on its proposals.

2.9. The consultation focused upon four new dog control PSPO proposals:

- Prohibiting dog fouling by ensuring that dog owners and walkers clear up after their dogs.
- The establishment of dog exclusion areas, predominantly children’s playgrounds and enclosed play and sports facilities, such as tennis courts, multi-use games areas and bowling greens.
- Dogs to be put on a lead in public places when directed to do so by an authorised officer of the council, a police officer or a community support officer. (This proposal would apply within Morden Hall Park and on Mitcham Common, but not Wimbledon Common which has its own byelaws).
- The maximum number of dogs that can be walked by one person in all public open spaces (including Morden Hall Park and Mitcham Common, but excluding Wimbledon Common) at any one time is four.

2.10. The results of the community consultation are provided in a summary report at Appendix 1 and show very clear and, in some cases, overwhelming support for the Council’s proposals as follows:

- Prohibiting dog fouling by ensuring that dog owners and walkers clear up after their dogs. **98.5% support**
- The establishment of dog exclusion areas, predominantly children’s playgrounds and enclosed play and sports facilities, such as tennis courts, multi-use games areas and bowling greens. **87.0% support**
- Dogs to be put on a lead in public places when directed to do so by an authorised officer of the council, a police officer or a community support officer. (This proposal would apply within Morden Hall Park and on Mitcham Common, but not Wimbledon Common which has its own byelaws). **76.5% support**
- The maximum number of dogs that can be walked by one person in all public open spaces (including Morden Hall Park and Mitcham Common, but excluding Wimbledon Common) at any one time is four. **70.0% support**

3 ALTERNATIVE OPTIONS

- 3.1. An alternative option would be to do nothing. The dog fouling and dog exclusion provisions would remain in force under the transitional provisions until October 2020, however this would not address the existing community concerns relating to dogs on leads and multiple dog walking. It would seem sensible to incorporate all the dog control measure into one new PSPO.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. A public consultation exercise on the Council's dog control proposals was undertaken between 24 August and 30 October 2017. A summary report of that exercise is included within this report at Appendix 1.
- 4.2. A report on the Council's dog control proposals was considered by the Sustainable Communities Overview and Scrutiny Panel on 2 November 2017.

5 TIMETABLE

- 5.1. A nine week community consultation exercise on the Council's dog control proposals closed on the 30 October 2017. The findings of the survey that formed a core component of the consultation has informed the recommendations presented within this report for Cabinet's consideration and approval.
- 5.2. Pending the recommendations and views of Cabinet, this matter will be presented to Council on 7 February 2017 for its approval and for the formal making of the agreed dog control PSPO on 5 March 2018 or as soon as reasonably practical thereafter.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are no significant financial or resource implications arising from these proposals. There will be some minor additional on-site signage needs that will be funded from within existing budgets and the operational aspects of the enforcement of the PSPO will be included within the routine duties of the departmental officers and its environmental enforcement contractors and the police, as appropriate.
- 6.2. The enforcement of the PSPO will generate income from the issuing of fixed penalty notices.
- 6.3. Officers have recommended a fixed penalty of £80 within 14 days but with no discount for earlier payment.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 enables a local authority to make a PSPO if it is satisfied on reasonable grounds that two conditions are met. The first condition is that the activities carried on in a public place within the authority's area have had a detrimental

effect on the quality of life of those in the locality, or it is likely that they will have such an effect. The second condition is that the effect, or likely effect of the activities a) is, or is likely to be, such as to be, of a persistent or continuing nature, b) is, or is likely to be, such as to make the activities unreasonable, and c) justifies the restrictions imposed.

- 7.2. When deciding whether to make a PSPO, section 72 requires a local authority to carry out consultation.
- 7.3. The validity of a PSPO can be challenged in the High Court within 6 weeks of it being made. There are two possible grounds for challenge. Firstly, that the local authority did not have power to make the order, or to include particular prohibitions or requirements in the order. The second ground is that a requirement of the Act for making the Order was not complied with. The challenge can only be brought by those directly affected by the restrictions, that is, an individual who lives in, or regularly works in, or visits the area.
- 7.4. Non compliance with a PSPO is a criminal offence and subject to a fine of up to £1,000 on conviction. The Act provides however that liability can be discharged by payment of a fixed penalty within 14 days, with a discount for earlier payment if so desired. The maximum amount that can be charged is £100 and the Council will have to decide the amount of the fixed penalty and if there is to be a discounted amount.
- 7.5. In deciding whether to make a PSPO, and if so what should be included in it, under section 72 of the 2014 Act the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). The restrictions which will be made if the proposed PSPO is made do not engage these Articles and are considered compatible with rights under the Convention.
- 7.6. A copy of a draft version of the proposed London Borough of Merton Public Spaces Protection Order (Dog Control) is included as an appendix to this report.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. A public consultation exercise on the Council’s dog control proposals was conducted between August and October 2017. Details of the consultation were widely circulated within the borough (as outlined in Appendix 1), including to community groups and organisations representing the interest of dogs and dog walkers to ensure that participation by stakeholders was maximised.
- 8.2. Officers have had regard to the Council’s duties under the Equality Act 2010. An Equalities Analysis has been carried out to consider the potential benefits as well as potential negative impacts for protected groups.
- 8.3. The Equalities Analysis identified no significant negative impacts upon equality groups, but a positive impact in relation to the enjoyment of

playgrounds, ball courts & similar play facilities by children and young people where dogs will be excluded.

- 8.4. Exemptions have been included within the proposed PSPO for assistance dogs.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. Measures to control unruly and overly aggressive dogs are included within the recommendations contained within this report.

- 9.2. Additional recommendations include restrictions on the maximum number of dogs that can be walked by one person in public open spaces within Merton (with the exception of Wimbledon Common) at any one time in order to address concerns in relation to large packs of dogs that are commonly witnessed in some of the borough's larger open spaces and recommended measures to exclude dogs from sensitive public spaces such as children's playgrounds.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. The risk of not addressing this issue would be irresponsible and could be considered as a failure by the Council to address the genuine needs and wishes of the community, highlighted by the recent consultation exercise, and thereby exacerbating existing community health and safety concerns from dog faeces and overly aggressive dogs, for example.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Consultation on proposed new Dog Control Public Space Protection Orders in Merton - Summary report.
- London Borough of Merton Public Spaces Protection Order 2018 (Dog Control)(Draft)

12 BACKGROUND PAPERS

- 12.1. The recent public consultation details and survey on dog controls in the borough can be viewed here:

www.merton.gov.uk/dogcontrolorders

Public Space Protection Orders – Guidance for councils:

https://www.local.gov.uk/.../10.4%20-%20PSPO%20guidance_03_1.pdf

Public Space Protection Orders - Dog Controls. Report to Merton Sustainable Communities Overview and Scrutiny Panel, 2 November 2017.

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